

Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See 86 Ill. Adm. Code 130.310 (b)(5). (This is a GIL).

October 23, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 13, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

I ask for a binding letter ruling regarding sales tax.

Issue: Whether new enhanced water products are subject to sales tax when non-carbonated? High tax or low tax?

For an example of the enhanced water products' ingredients and marketing claims, I attached two product labels to this letter.

- 1.) Elements Enhanced Water
- 2.) Aquafina Essentials Enhanced Water

If tax is due, please explain why and cite statutes and regulations in the answer.

Thank you for your assistance.

The Retailers' Occupation Tax Act imposes a tax upon "persons engaged in the business of selling at retail tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for public commercial exhibition." 35 ILCS 120/2. The state rate is 6.25% plus applicable local taxes for general merchandise and 1% plus applicable local taxes for items that qualify as food, drugs or medical appliances.

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding tax on food, medicine and medical appliances under the Retailers' Occupation Tax Act. As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages,

soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See Section 130.310(b)(1).

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.